

REFERENCE TITLE: liquor; underage persons; penalties

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1364

Introduced by
Senator Gray L

AN ACT

AMENDING SECTIONS 4-241 AND 4-244, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-244.01; RELATING TO LIQUOR PROHIBITIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-241, Arizona Revised Statutes, is amended to
3 read:

4 4-241. Selling or giving liquor to underage person; illegally
5 obtaining liquor by underage person; violation;
6 classification

7 A. A licensee, an employee or any other person who questions or has
8 reason to question whether or not a person ordering, purchasing, attempting
9 to purchase or otherwise procuring or attempting to procure the serving or
10 delivery of spirituous liquor is under the legal drinking age shall require
11 the person to exhibit a written instrument of identification and may require
12 the person on a card to be retained by the licensee to sign the person's
13 name, the date, ~~and~~ and the number of such identification. An off-sale retail
14 licensee or employee of an off-sale retail licensee shall require an
15 instrument of identification from any customer who appears to be under
16 twenty-seven years of age and who is using a drive-through or other physical
17 feature of the licensed premises that allows a customer to purchase
18 spirituous liquor without leaving the customer's vehicle. The following
19 written instruments are the only acceptable types of identification:

20 1. An unexpired driver license issued by any state or Canada if the
21 license includes a picture of the licensee.

22 2. A nonoperating identification license issued pursuant to section
23 28-3165 or an equivalent form of identification license issued by any state
24 or Canada if the license includes a picture of the person and the person's
25 date of birth.

26 3. An armed forces identification card.

27 4. A valid unexpired passport or border crossing identification card
28 ~~which~~ THAT is issued by a government or A voter card THAT IS issued by the
29 government of Mexico ~~and which~~ IF THE PASSPORT OR CARD contains a photograph
30 of the person and the person's date of birth.

31 B. A licensee, an employee or any other person who sells, gives,
32 serves or furnishes spirituous liquor to a person who is under the legal
33 drinking age without having recorded and retained a record of the person's
34 age, an electronic file or a printed document produced by a device that reads
35 the person's age from the instrument of identification and obtains a
36 signature from any person ~~who~~ WHOM the licensee has reason to question if the
37 identification belonged to the person presenting the identification, or a
38 dated and signed photocopy of the instrument of identification exhibited as
39 prescribed by subsection A of this section is deemed to have constructive
40 knowledge of the person's age. This ~~section shall~~ SUBSECTION DOES not shift
41 the presumption of constructive knowledge of a person's age for anyone using
42 a device that reads the person's age from the instrument of identification,
43 if a reasonable person would have reason to question if the identification
44 belonged to the person presenting the identification.

1 C. A person who is under the legal drinking age and who misrepresents
2 the person's age to any person by means of a written instrument of
3 identification with the intent to induce a person to sell, serve, give or
4 furnish spirituous liquor contrary to law is guilty of a class 1 misdemeanor.

5 D. A person who is under the legal drinking age and who solicits
6 another person to purchase, sell, give, serve or furnish spirituous liquor
7 contrary to law is guilty of a class 3 misdemeanor.

8 E. A person who is under the legal drinking age and who uses a
9 fraudulent or false written instrument of identification or identification of
10 another person or uses a valid license or identification of another person to
11 gain access to a licensed establishment is guilty of a class 1 misdemeanor.

12 F. A person who uses a driver or nonoperating identification license
13 in violation of subsection C or E of this section is subject to suspension of
14 the driver or nonoperating identification license as provided in section
15 28-3309. A person who does not have a valid driver or nonoperating
16 identification license and who uses a driver or nonoperating identification
17 license of another in violation of subsection C or E of this section has the
18 person's right to apply for a driver or nonoperating identification license
19 suspended as provided by section 28-3309.

20 G. A person who knowingly influences the sale, giving or serving of
21 spirituous liquor to a person under the legal drinking age by misrepresenting
22 the age of such person or who orders, requests, receives or procures
23 spirituous liquor from any licensee, employee or other person with the intent
24 of selling, giving or serving it to a person under the legal drinking age is
25 guilty of a class ~~1 misdemeanor~~ 6 FELONY. In addition to other penalties
26 provided by law, a judge may suspend a driver license issued to or the
27 driving privilege of a person for not more than thirty days for a first
28 conviction and not more than six months for a second or subsequent conviction
29 under this subsection.

30 ~~H. A person who is of legal drinking age and who is an occupant of~~
31 ~~unlicensed premises is guilty of a class 1 misdemeanor if both of the~~
32 ~~following apply:~~

33 ~~1. Such person knowingly allows a gathering on such unlicensed~~
34 ~~premises of two or more persons who are under the legal drinking age and who~~
35 ~~are neither:~~

36 ~~(a) Members of the immediate family of such person.~~

37 ~~(b) Permanently residing with such person.~~

38 ~~2. Such person knows or should know that one or more of the persons~~
39 ~~under the legal drinking age is in possession of or consuming spirituous~~
40 ~~liquor on the unlicensed premises.~~

41 ~~I. For the purposes of subsection H of this section, "occupant" means~~
42 ~~a person who has legal possession or the legal right to exclude others from~~
43 ~~the unlicensed premises.~~

44 ~~J.~~ H. A peace officer shall forward or electronically transfer to the
45 director of the department of transportation the affidavit required by

1 section 28-3310 if the peace officer has arrested a person for the commission
2 of an offense for which, on conviction, suspension of the license or
3 privilege to operate a motor vehicle is required by section 28-3309,
4 subsection A, B or D, or if the peace officer has confiscated a false
5 identification document used by the person to gain access to licensed
6 premises.

7 ~~K.~~ I. A person who acts under a program of testing compliance with
8 this title ~~which~~ THAT is approved by the director is not in violation of
9 section 4-244.

10 ~~L.~~ J. Law enforcement agencies may use persons who are under the
11 legal drinking age to test compliance with this section and section 4-244,
12 paragraph 9 by a licensee if the law enforcement agency has reasonable
13 suspicion that the licensee is violating this section or section 4-244,
14 paragraph 9. A person who is under the legal drinking age and who purchases
15 or attempts to purchase spirituous liquor under the direction of a law
16 enforcement agency pursuant to this subsection is immune from prosecution for
17 that purchase or attempted purchase. Law enforcement agencies may use a
18 person under the legal drinking age pursuant to this subsection only if:

19 1. The person is at least fifteen but not more than nineteen years of
20 age.

21 2. The person is not employed on an incentive or quota basis.

22 3. The person's appearance is that of a person who is under the legal
23 drinking age.

24 4. A photograph of the person is taken no more than twelve hours
25 before the purchase or attempted purchase. The photograph shall accurately
26 depict the person's appearance and attire. A licensee or an employee of a
27 licensee who is cited for selling spirituous liquor to a person under the
28 legal drinking age pursuant to this subsection shall be permitted to inspect
29 the photograph immediately after the citation is issued. The person's
30 appearance at any trial or administrative hearing that results from a
31 citation shall not be substantially different from the person's appearance at
32 the time the citation was issued.

33 5. The person places, receives and pays for the person's order of
34 spirituous liquor. An adult shall not accompany the person onto the premises
35 of the licensee.

36 6. The person does not consume any spirituous liquor.

37 ~~M.~~ K. The department may adopt rules to carry out the purposes of
38 this section.

39 Sec. 2. Section 4-244, Arizona Revised Statutes, is amended to read:

40 4-244. Unlawful acts

41 It is unlawful:

42 1. For a person to buy for resale, sell or deal in spirituous liquors
43 in this state without first having procured a license duly issued by the
44 board.

1 2. For a person to sell or deal in alcohol for beverage purposes
2 without first complying with this title.

3 3. For a distiller, vintner, brewer or wholesaler knowingly to sell,
4 dispose of or give spirituous liquor to any person other than a licensee
5 except in sampling wares as may be necessary in the ordinary course of
6 business, except in donating spirituous liquor to a nonprofit organization
7 which has obtained a special event license for the purpose of charitable fund
8 raising activities or except in donating spirituous liquor with a cost to the
9 distiller, brewer or wholesaler of up to one hundred dollars in a calendar
10 year to an organization that is exempt from federal income taxes under
11 section 501(c) of the internal revenue code and not licensed under this
12 title.

13 4. For a distiller, vintner or brewer to require a wholesaler to offer
14 or grant a discount to a retailer, unless the discount has also been offered
15 and granted to the wholesaler by the distiller, vintner or brewer.

16 5. For a distiller, vintner or brewer to use a vehicle for trucking or
17 transportation of spirituous liquors unless there is affixed to both sides of
18 the vehicle a sign showing the name and address of the licensee and the type
19 and number of the person's license in letters not less than three and
20 one-half inches in height.

21 6. For a person to take or solicit orders for spirituous liquors
22 unless the person is a salesman or solicitor of a licensed wholesaler, a
23 salesman or solicitor of a distiller, brewer, vintner, importer or broker or
24 a registered retail agent.

25 7. For any retail licensee to purchase spirituous liquors from any
26 person other than a solicitor or salesman of a wholesaler licensed in this
27 state.

28 8. For a retailer to acquire an interest in property owned, occupied
29 or used by a wholesaler in his business, or in a license with respect to the
30 premises of the wholesaler.

31 9. Except as provided in paragraphs 10 and 11 of this section, for a
32 licensee or ~~other person~~ AN EMPLOYEE OF A LICENSEE to sell, furnish, dispose
33 of or give, or cause to be sold, furnished, disposed of or given, to a person
34 under the legal drinking age or for a person under the legal drinking age to
35 buy, receive, have in the person's possession or consume spirituous liquor.
36 This paragraph shall not prohibit the employment by an off-sale retailer of
37 persons who are at least sixteen years of age to check out, if supervised by
38 a person on the premises who is at least nineteen years of age, package or
39 carry merchandise, including spirituous liquor, in unbroken packages, for the
40 convenience of the customer of the employer, if the employer sells primarily
41 merchandise other than spirituous liquor.

42 10. For a licensee to employ a person under ~~the age of~~ nineteen years
43 OF AGE to manufacture, sell or dispose of spirituous liquors. This paragraph
44 shall not prohibit the employment by an off-sale retailer of persons who are
45 at least sixteen years of age to check out, if supervised by a person on the

1 premises who is at least nineteen years of age, package or carry merchandise,
2 including spirituous liquor, in unbroken packages, for the convenience of the
3 customer of the employer, if the employer sells primarily merchandise other
4 than spirituous liquor.

5 11. For an on-sale retailer to employ a person under ~~the age of~~
6 nineteen years **OF AGE** in any capacity connected with the handling of
7 spirituous liquors. This paragraph does not prohibit the employment by an
8 on-sale retailer of a person under the age of nineteen years who cleans up
9 the tables on the premises for reuse, removes dirty dishes, keeps a ready
10 supply of needed items and helps clean up the premises.

11 12. For a licensee, when engaged in waiting on or serving customers, to
12 consume spirituous liquor or for a licensee or on-duty employee to be on or
13 about the licensed premises while in an intoxicated or disorderly condition.

14 13. For an employee of a retail licensee, during that employee's
15 working hours or in connection with such employment, to give to or purchase
16 for any other person, accept a gift of, purchase for himself or consume
17 spirituous liquor, except that:

18 (a) An employee of a licensee, during that employee's working hours or
19 in connection with the employment, while the employee is not engaged in
20 waiting on or serving customers, may give spirituous liquor to or purchase
21 spirituous liquor for any other person.

22 (b) An employee of an on-sale retail licensee, during that employee's
23 working hours or in connection with the employment, while the employee is not
24 engaged in waiting on or serving customers, may taste samples of beer or wine
25 not to exceed four ounces per day or distilled spirits not to exceed two
26 ounces per day provided by an employee of a wholesaler or distributor who is
27 present at the time of the sampling.

28 (c) An employee of an on-sale retail licensee, under the supervision
29 of a manager as part of the employee's training and education, while not
30 engaged in waiting on or serving customers may taste samples of distilled
31 spirits not to exceed two ounces per educational session or beer or wine not
32 to exceed four ounces per educational session, and provided that a licensee
33 shall not have more than two educational sessions in any thirty day period.

34 (d) An unpaid volunteer who is a bona fide member of a club and who is
35 not engaged in waiting on or serving spirituous liquor to customers may
36 purchase for himself and consume spirituous liquor while participating in a
37 scheduled event at the club. An unpaid participant in a food competition may
38 purchase for himself and consume spirituous liquor while participating in the
39 food competition.

40 (e) An unpaid volunteer of a special event licensee under section
41 4-203.02 may purchase and consume spirituous liquor while not engaged in
42 waiting on or serving spirituous liquor to customers at the special
43 event. This subdivision does not apply to an unpaid volunteer whose
44 responsibilities include verification of a person's legal drinking age,
45 security or the operation of any vehicle or heavy machinery.

1 14. For a licensee or other person to serve, sell or furnish spirituous
2 liquor to a disorderly or obviously intoxicated person, or for a licensee or
3 employee of the licensee to allow or permit a disorderly or obviously
4 intoxicated person to come into or remain on or about the premises, except
5 that a licensee or an employee of the licensee may allow an obviously
6 intoxicated person to remain on the premises for a period of time of not to
7 exceed thirty minutes after the state of obvious intoxication is known or
8 should be known to the licensee in order that a nonintoxicated person may
9 transport the obviously intoxicated person from the premises. For THE
10 purposes of this ~~section~~ PARAGRAPH, "obviously intoxicated" means inebriated
11 to the extent that a person's physical faculties are substantially impaired
12 and the impairment is shown by significantly uncoordinated physical action or
13 significant physical dysfunction that would have been obvious to a reasonable
14 person.

15 15. For an on-sale or off-sale retailer or an employee of such retailer
16 to sell, dispose of, deliver or give spirituous liquor to a person between
17 the hours of 2:00 a.m. and 6:00 a.m. on weekdays, and 2:00 a.m. and 10:00
18 a.m. on Sundays.

19 16. For a licensee or employee to knowingly permit any person on or
20 about the licensed premises to give or furnish any spirituous liquor to any
21 person under the age of twenty-one or knowingly permit any person under the
22 age of twenty-one to have in the person's possession spirituous liquor on the
23 licensed premises.

24 17. For an on-sale retailer or an employee of such retailer to allow a
25 person to consume or possess spirituous liquors on the premises between the
26 hours of 2:30 a.m. and 6:00 a.m. on weekdays, and 2:30 a.m. and 10:00 a.m.
27 on Sundays.

28 18. For an on-sale retailer to permit an employee or for an employee to
29 solicit or encourage others, directly or indirectly, to buy the employee
30 drinks or anything of value in the licensed premises during the employee's
31 working hours. No on-sale retailer shall serve employees or allow a patron
32 of the establishment to give spirituous liquor to, purchase liquor for or
33 drink liquor with any employee during the employee's working hours.

34 19. For an off-sale retailer or employee to sell spirituous liquor
35 except in the original unbroken container, to permit spirituous liquor to be
36 consumed on the premises or to knowingly permit spirituous liquor to be
37 consumed on adjacent property under the licensee's exclusive control.

38 20. For a person to consume spirituous liquor in a public place,
39 thoroughfare or gathering. The license of a licensee permitting a violation
40 of this paragraph on the premises shall be subject to revocation. This
41 paragraph does not apply to the sale of spirituous liquors on the premises of
42 and by an on-sale retailer. This paragraph also does not apply to a person
43 consuming beer from a broken package in a public recreation area or on
44 private property with permission of the owner or lessor or on the walkways
45 surrounding such private property.

1 21. For a person to have possession of or to transport spirituous
2 liquor which is manufactured in a distillery, winery, brewery or rectifying
3 plant contrary to the laws of the United States and this state. Any property
4 used in transporting such spirituous liquor shall be forfeited to the state
5 and shall be seized and disposed of as provided in section 4-221.

6 22. For an on-sale retailer or employee to allow a person under the
7 legal drinking age to remain in an area on the licensed premises during those
8 hours in which its primary use is the sale, dispensing or consumption of
9 alcoholic beverages after the licensee, or the licensee's employees, know or
10 should have known that the person is under the legal drinking age. An
11 on-sale retailer may designate an area of the licensed premises as an area in
12 which spirituous liquor will not be sold or consumed for the purpose of
13 allowing underage persons on the premises if the designated area is separated
14 by a physical barrier and at no time will underage persons have access to the
15 area in which spirituous liquor is sold or consumed. The director, or a
16 municipality, may adopt rules to regulate the presence of underage persons on
17 licensed premises provided the rules adopted by a municipality are more
18 stringent than those adopted by the director. The rules adopted by the
19 municipality shall be adopted by local ordinance. This paragraph does not
20 apply:

21 (a) If the person under the legal drinking age is accompanied by a
22 spouse, parent or legal guardian of legal drinking age or is an on-duty
23 employee of the licensee.

24 (b) If the owner, lessee or occupant of the premises is a club as
25 defined in section 4-101, paragraph 7, subdivision (a) and the person under
26 the legal drinking age is any of the following:

27 (i) An active duty military service member.

28 (ii) A veteran.

29 (iii) A member of the United States army national guard or the United
30 States air national guard.

31 (iv) A member of the United States military reserve forces.

32 (c) To the area of the premises used primarily for the serving of food
33 during the hours when food is served.

34 23. For an on-sale retailer or employee to conduct drinking contests,
35 to sell or deliver to a person an unlimited number of spirituous liquor
36 beverages during any set period of time for a fixed price, to deliver more
37 than thirty-two ounces of beer, one liter of wine or four ounces of distilled
38 spirits in any spirituous liquor drink to one person at one time for that
39 person's consumption or to advertise any practice prohibited by this
40 paragraph.

41 24. For a licensee or employee to knowingly permit the unlawful
42 possession, use, sale or offer for sale of narcotics, dangerous drugs or
43 marijuana on the premises.

44 25. For a licensee or employee to knowingly permit prostitution or the
45 solicitation of prostitution on the premises.

1 26. For a licensee or employee to knowingly permit unlawful gambling on
2 the premises.

3 27. For a licensee or employee to knowingly permit trafficking or
4 attempted trafficking in stolen property on the premises.

5 28. For a licensee or employee to fail or refuse to make the premises
6 or records available for inspection and examination as provided in this title
7 or to comply with a lawful subpoena issued under this title.

8 29. For any person other than a peace officer, the licensee or an
9 employee of the licensee acting with the permission of the licensee to be in
10 possession of a firearm while on the licensed premises of an on-sale retailer
11 knowing such possession is prohibited. This paragraph shall not be construed
12 to include a situation in which a person is on licensed premises for a
13 limited time in order to seek emergency aid and such person does not buy,
14 receive, consume or possess spirituous liquor. This paragraph shall not
15 apply to hotel or motel guest room accommodations nor to the exhibition or
16 display of a firearm in conjunction with a meeting, show, class or similar
17 event.

18 30. For a licensee or employee to knowingly permit a person in
19 possession of a firearm other than a peace officer, the licensee or an
20 employee of the licensee acting with the permission of the licensee to remain
21 on the licensed premises or to serve, sell or furnish spirituous liquor to a
22 person in possession of a firearm while on the licensed premises of an
23 on-sale retailer. This paragraph shall not apply to hotel or motel guest
24 room accommodations nor to the exhibition or display of a firearm in
25 conjunction with a meeting, show, class or similar event. It shall be a
26 defense to action under this paragraph if the licensee or employee requested
27 assistance of a peace officer to remove such person.

28 31. For a licensee or employee to knowingly permit spirituous liquor to
29 be removed from the licensed premises, except in the original unbroken
30 package. This paragraph shall not apply to a person who removes a bottle of
31 wine which has been partially consumed in conjunction with a purchased meal
32 from the licensed premises if the cork is reinserted flush with the top of
33 the bottle.

34 32. For a person who is obviously intoxicated to buy or attempt to buy
35 spirituous liquor from a licensee or ~~AN~~ employee of a licensee or to consume
36 spirituous liquor on licensed premises. **FOR THE PURPOSES OF THIS PARAGRAPH,
37 "OBVIOUSLY INTOXICATED" MEANS INEBRIATED TO THE EXTENT THAT A PERSON'S
38 PHYSICAL FACULTIES ARE SUBSTANTIALLY IMPAIRED AND THE IMPAIRMENT IS SHOWN BY
39 SIGNIFICANTLY UNCOORDINATED PHYSICAL ACTION OR SIGNIFICANT PHYSICAL
40 DYSFUNCTION THAT WOULD HAVE BEEN OBVIOUS TO A REASONABLE PERSON.**

41 33. For a person under ~~the age of~~ twenty-one years **OF AGE** to drive or
42 be in physical control of a motor vehicle while there is any spirituous
43 liquor in the person's body.

44 34. For a person under ~~the age of~~ twenty-one years **OF AGE** to operate or
45 be in physical control of a motorized watercraft that is underway while there

1 is any spirituous liquor in the person's body. For the purposes of this
2 paragraph, "underway" has the same meaning prescribed in section 5-301.

3 35. For a licensee, manager, employee or controlling person to
4 purposely induce a voter, by means of alcohol, to vote or abstain from voting
5 for or against a particular candidate or issue on an election day.

6 36. For a licensee to fail to report an occurrence of an act of
7 violence to either the department or a law enforcement agency.

8 37. For a licensee to use a vending machine for the purpose of
9 dispensing spirituous liquor.

10 38. For a licensee to offer for sale a wine carrying a label including
11 a reference to Arizona or any Arizona city, town or geographic location
12 unless at least seventy-five per cent by volume of the grapes used in making
13 the wine were grown in Arizona.

14 39. For a retailer to knowingly allow a customer to bring spirituous
15 liquor onto the licensed premises, except that an on-sale retailer may allow
16 a wine and food club to bring wine onto the premises for consumption by the
17 club's members and guests of the club's members in conjunction with meals
18 purchased at a meeting of the club that is conducted on the premises and that
19 at least seven members attend. An on-sale retailer who allows wine and food
20 clubs to bring wine onto its premises under this paragraph shall comply with
21 all applicable provisions of this title and any rules adopted pursuant to
22 this title to the same extent as if the on-sale retailer had sold the wine to
23 the members of the club and their guests. For the purposes of this
24 paragraph, "wine and food club" means an association that has more than
25 twenty bona fide members paying at least six dollars per year in dues and
26 that has been in existence for at least one year.

27 40. For a person under ~~the age of~~ twenty-one years OF AGE to have in
28 the person's body any spirituous liquor. In a prosecution for a violation of
29 this paragraph:

30 (a) Pursuant to section 4-249, it is a defense that the spirituous
31 liquor was consumed in connection with the bona fide practice of a religious
32 belief or as an integral part of a religious exercise and in a manner not
33 dangerous to public health or safety.

34 (b) Pursuant to section 4-226, it is a defense that the spirituous
35 liquor was consumed for a bona fide medicinal purpose and in a manner not
36 dangerous to public health or safety.

37 41. For an employee of a licensee to accept any gratuity, compensation,
38 remuneration or consideration of any kind to either:

39 (a) Permit a person who is under twenty-one years of age to enter any
40 portion of the premises where that person is prohibited from entering
41 pursuant to paragraph 22 of this section.

42 (b) Sell, furnish, dispose of or give spirituous liquor to a person
43 who is under twenty-one years of age.

